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Federal Communications Commission

DA 93-1485

FOC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

JUN 4 2 56 PM '94

MM Docket No. 93-307

DISPATCHED BY

In the Matter of

93-307

Amendment of Section 73.202(b), RM-8386
Table of Allotments,
FM Broadcast Stations.
(Jensen Beach and Melbourne,
Florida)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 8, 1993; Released: January 4, 1994

By the Acting Chief, Allocations Branch:

Comment Date: February 25, 1994

Reply Comment Date: March 14, 1994

1. The Commission has before it the petition for rule making filed jointly by HLG, Inc. ("HLG"), licensee of Station WHLG(FM), Channel 272A, Jensen Beach, Florida, and City Broadcasting Co., ("City"), licensee of Station WGGD(FM), Channel 272A, Melbourne, Florida ("jointly referred to as 'petitioners'"). Petitioners request the substitution of Channel 272C3 for Channel 272A at Jensen Beach, Florida, and the modification of Station WHLG(FM)'s license; and the substitution of Channel 236A for Channel 272A at Melbourne, Florida, and the modification of Station WGGD(FM)'s license, in order to accommodate the upgrade at Jensen Beach. City and HLG each state that they will apply for the respective channels, if allotted.

2. We believe the proposal warrants consideration, since the proposed substitution of Channel 272C3 for Channel 272A at Jensen Beach would provide that community with a wide coverage area FM service. In addition, the substitution of Channel 236A for Channel 272A at Melbourne will allow Station WGGD(FM) to operate at 6 kilowatts. Channel 272C3 can be allotted to Jensen Beach in compliance with the minimum distance separation requirements of the Commission's Rules at the licensed transmitter site.¹ Channel 236A can be allotted to Melbourne in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 6.4 kilometers (4 miles) north of the community,² in order to avoid a short-spacing to Station WWRM(FM) Channel 235C, Tampa, Florida.

3. As requested, we shall propose to modify the license of Station WHLG(FM), Jensen Beach, Florida, to specify operation on Channel 272C3 in lieu of Channel 272A in

accordance with Section 1.420(g) of the Rules. We shall also propose to modify the license of Station WGGD(FM), Melbourne, Florida, to specify operation on Channel 236A in lieu of Channel 272A at Melbourne.

4. Whenever an existing licensee or permittee is ordered to change frequencies in order to accommodate a new channel allotment, Commission policy requires the benefiting party to reimburse the affected station for costs incurred therewith. HLG has stated that it will reimburse City, the licensee of Station WGGD(FM), Melbourne, Florida, for the costs associated with relocating its station in order to accommodate the upgrade at Jensen Beach. Since the licensee of Station WGGD(FM) has consented to the proposed frequency change and site relocation, we shall not issue an *Order to Show Cause* to the licensee of Station WGGD(FM).

5. The Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

		Channel No.	
City	Present	Proposed	
Jensen Beach, Florida	272A	272C3	
Melbourne, Florida	272A, 292A, 296C1	236A, 292A, 296C1	

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **February 25, 1994**, and reply comments on or before **March 14, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Bruce A. Eisen
Kaye, Scholer, Fierman
Hays & Handler
901 15th Street, N.W., Suite 1100
Washington, D.C. 20005-2327
(Counsel for HLG, Inc. & City Broadcasting
Company, Inc.)

8. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice of Proposed Rule Making* to the licensees, as follows: HLG, Inc., Station

¹ The coordinates for Channel 272C3 at Jensen Beach are 27-12-53 North Latitude and 80-15-24 West Longitude.

² The coordinates for Channel 236A at Melbourne are 28-08-08 North Latitude and 80-35-35 West Longitude.

WHLG(FM), 1000 Alice Avenue, Stuart, Florida 33494, and City Broadcasting Company, Inc., Station WGGD(FM), 2221 Front Street, Melbourne, Florida 32901.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.